

## UPDATED INFORMATIVE DIGEST

The Residential Care Facilities for the Elderly (RCFE) Act in existing law provides for the licensure and regulation of RCFEs. RCFEs are regarded by statute as a housing arrangement chosen voluntarily by people who are 60 years of age or over or their authorized representatives where varying levels and intensities of care and supervision, protective supervision, or personal care are provided based on the varying needs of a person pursuant to Section 1569.2 of the Health and Safety Code. Also pursuant to this statute, care in RCFEs may be provided to persons who are under 60 years of age with compatible needs as specified in Section 1569.316.

Previous existing law has not enacted personal rights for residents in RCFEs. Assembly Bill (AB) 2171 (Chapter 702, Statutes of 2014) became effective January 1, 2015 and:

- 1) Enacted a "bill of rights" for residents in privately operated RCFEs in a new Article 2.5 in the Residential Care Facilities for the Elderly Act.
- 2) Required licensees to post, in a prominent location, a copy of the bill of rights in English and, if residents in a facility read in another language, in any other language in which five (5) percent or more of the residents can only read that other language.

Senate Bill (SB) 219 (Chapter 483, Statutes of 2017) became effective January 1, 2018 and:

- 1) Enacted a "bill of rights" to address the needs of residents who are lesbian, gay, bisexual, and transgender (LGBT) in RCFEs, in Health and Safety Code section 1439.50, et seq. for long-term care facilities, and applied the bill of rights to RCFEs as specified in Health and Safety Code section 1569.318.
- 2) Required licensees to post a nondiscrimination notice alongside a facility's current nondiscrimination policy in all places and on all materials where the policy is posted.

SB 895 (Chapter 704, Statutes of 2014) became effective January 1, 2015 and required the Department to design, or cause to be designed, a poster that contains information on the appropriate reporting agency in case of a complaint or emergency for posting in RCFEs.

Existing regulations in the California Code of Regulations (CCR), Title 22, Division 6, Chapter 8, RCFE Section 87468 established that each resident in RCFEs have 18 personal rights, which include such concepts as the right to be accorded dignity in his or her personal relationships with staff, residents, and other persons and the right to be informed by the licensee of provisions of law regarding complaints and of procedures to confidentially register complaints, including, but not limited to, the address and telephone number of the complaint receiving unit of the licensing agency. These regulations also established the requirement that licensees inform residents of their personal rights.

These proposed regulations amend the CCR, Title 22, Section 87468 to maintain it as a lead section to address general requirements in regard to personal rights of residents in

all RCFEs. They also require that: 1) residents in publicly operated RCFEs continue to be afforded personal rights based on existing regulations; 2) residents in privately operated RCFEs be afforded personal rights based on statute; 3) residents in all RCFEs be afforded personal rights to address the needs of residents who are LGBT; 4) regardless of number of residents, all licensees provide residents and their representatives with written copies of personal rights and post personal rights, nondiscrimination notice, and complaint information; 5) In RCFEs where residents read in another language, personal rights, nondiscrimination notice, and complaint information also be posted in any other language in which five (5) percent or more of the residents can only read that other language; 6) all licensees keep an accurate and confidential list of all residents and languages read by residents and provide this list to the Department upon request; and 7) all licensees include information that is specific to a resident's gender identity in resident records.

These proposed regulations also make miscellaneous changes to regulations that do not address resident personal rights. One of these changes is needed to amend the timeframe for notice of sale of a RCFE as a result of changes to Health and Safety Code section 1569.191, which reduced the timeframe for this notice from 60 days to 30 days. Other changes are needed to clarify requirements for medication storage, repeal an incorrect subsection reference in regulations, and adopt unstageable pressure injuries as a prohibited health condition.

This regulatory action will benefit residents receiving care in privately operated RCFEs by according them statutory personal rights that are consistent with the patient bill of rights implemented by the California Advocates for Nursing Home Reform, California Department of Public Health, and Medicare. Residents in both privately operated and publicly operated RCFEs will continue to have the protection of personal rights. This action will also further address the needs of residents who are LGBT. It will also ensure that residents, including those who read in other languages, in all RCFEs have equal access to and awareness of personal rights, nondiscrimination notice, and complaint information. In addition, this action will assist all licensees in ensuring compliance in providing care to residents.

The Department finds that these proposed regulations are compatible and consistent with the intent of the Legislature in adopting AB 2171, AB 878, SB 219, and SB 895 and with existing state regulations. After conducting a review for any regulations that would relate to or affect this area, the Department has concluded that, other than mentioned above, these are the only regulations that concern personal rights and complaints for Residential Care Facilities for the Elderly in California.

#### ***Form Incorporated by Reference***

Residential Care Facility for the Elderly (RCFE) Complaint Poster (PUB 475, 1/15)

#### ***Post-hearing (August 30, 2017) change summary:***

The regulations were noticed on July 14, 2017 and a public hearing held on August 30, 2017. Testimony was received during the 45-day comment period ending at 5:00 p.m., August 30, 2017. CDSS considered the testimony and changes were made to the proposed regulations. These changes include:

- 1) Amending Section 87109(b) to:
  - a. Replace "responsible persons" with "representatives" for consistency with the replacement of "responsible persons" with "representative" in other sections, e.g., Sections 87468(b) and (c), addressed by this regulation package
  - b. Clarify that notification by the licensee must be made at least thirty (30) days prior to the transfer of the property or business, or at the time that a bona fide offer is made, whichever period is longer, when either are expected to result in the pending sale or transfer of a facility.
- 2) Amending Section 87468 to:
  - a. Maintain it as a lead section to address general requirements in regard to personal rights of residents in all RCFEs.
  - b. Permit adoption of new regulatory sections to contain separate and comprehensive lists of personal rights.
  - c. Clarify the personal rights that are being referred to in Sections 87468(b) and (c) by adding references to new regulatory sections that contain personal rights.
- 3) Adopting the following sections:
  - a. Section 87468.1, Personal Rights of Residents in Publicly Operated Facilities
  - b. Section 87468.2, Personal Rights of Residents in Privately Operated Facilities
- 4) Adopting Section 87468.1(a)(4) to replace the phrasing "This includes the right to contact the agencies specified in Health and Safety Code section 1569.885" proposed for Section 87468(a)(1)(D) with reference to the specific agencies, which include the Community Care Licensing Division of the California Department of Social Services and the long-term care ombudsman, to contact when there are grievances in regard to the facility
- 5) Adopting handbook for Section 87468.1(a)(10) to replace the text of referenced statute in Health and Safety Code section 1569.313 proposed to be removed from Section 87468(a)(1)(J).

#### COST ESTIMATE

1. Costs or Savings to State Agencies: Community Care Licensing Division received one Associate Governmental Program Analyst position via AB 2171 (Chapter 702, Statutes of 2014) for purposes of writing these regulations. No other costs or savings effect on state agencies.
2. Costs to Local Agencies or School Districts Which Must Be Reimbursed in Accordance With Government Code Sections 17500 - 17630: None.
3. Nondiscretionary Costs or Savings to Local Agencies: None.
4. Federal Funding to State Agencies: None.

#### LOCAL MANDATE STATEMENT:

These regulations do not impose a mandate on local agencies or on local school districts. There are no reimbursable state-mandated costs under Section 17500 et seq. of the Government Code, because these regulations only make technical and clarifying changes.

## STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. Existing regulatory personal rights would continue to apply to publicly operated RCFEs.

Expanded personal rights regulations to implement AB 2171 would apply to privately operated RCFEs. Expanded personal rights regulations to implement SB 219 would apply to all RCFEs. Regardless of number of residents, all licensees would be required to provide residents and their representatives with written copies of personal rights and post personal rights, nondiscrimination notice, and complaint information, and post this information in English and any other language in which five (5) percent or more of the residents can only read that other language.

This determination was made based on that there will be some administrative costs to licensees of all RCFEs as a result of AB 2171, SB 219, and SB 895. Licensees would need to update admission agreements as they relate to resident personal rights and facility procedures as they relate to posting these rights, nondiscrimination notice, and complaint information in other languages read by five (5) percent or more of residents in a facility. Licensees would also need to develop and implement a method for collecting information from residents on the language they read and compile this information into a single list that is kept accurate and current. CDSS anticipates that this list will result in negligible cost to licensees since existing regulations in the CCR, Title 22, section 87508 require a register of residents, which may be expanded to address languages read by residents. In addition, licensees would need to update the posted resident personal rights, nondiscrimination notice, and complaint information whenever the composition of languages read by residents changes based on the five (5) percent rule.

Further, miscellaneous changes to regulations that do not address resident personal rights will require licensees of RCFEs to not accept or retain residents with unstageable pressure injuries. However, this and other miscellaneous changes do not have any statewide adverse economic impact directly affecting businesses or private persons in California.

## STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The proposed regulations in regard to personal rights would apply to privately operated RCFEs, while regulations in regard to posting personal rights, nondiscrimination notice, and complaint information would apply to all RCFEs. CDSS is aware that there will be some administrative cost impacts that a representative private person or business would incur in reasonable compliance with AB 2171, SB 219, and SB 895. These administrative cost impacts are described under "Statement of Significant Adverse Economic Impact on Business" above.

## SMALL BUSINESS IMPACT STATEMENT

The proposed regulations would apply to all RCFEs. RCFEs with a capacity of six or less comprise approximately 80 percent of RCFEs licensed by CDSS. CDSS has made an initial determination that there will be some administrative cost impacts to small businesses as a result of AB 2171, SB 219, and SB 895. These administrative cost impacts are described under "Statement of Significant Adverse Economic Impact on Business" above.

## STATEMENT OF RESULTS OF ECONOMIC IMPACT ASSESSMENT

The proposed amendments to regulations will neither create nor eliminate jobs in the State of California, nor result in the creation of new business, or expansion or elimination of existing businesses within the State of California. The benefits to the health and welfare of California residents within the RCFE system are as a result of the passage of AB 2171 and SB 219, which modify some of, and add to, the resident personal rights that have been in the CCR, Title 22, Division 6, RCFE, section 87468 since 2008. Further benefits are as a result of the passage of SB 895, which requires that licensees post a poster on how to file complaints, modifying the requirement to post procedures for filing complaints that has been in the CCR, Title 22, Division 6, RCFE, section 87468, since 2008. Other amendments to regulations that do not address personal rights, but are the result of miscellaneous changes in law or standards of care either modify, or are consistent with, requirements that have been in the CCR, Title 22, Division 6, RCFE, since 2008. For these reasons, CDSS has determined that the proposed regulations will not have an impact on worker safety, the state's environment, or the creation or elimination of jobs, nor the creation of new business, or the expansion or elimination of existing businesses in the State of California.

## STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

## STATEMENT OF ALTERNATIVES CONSIDERED

In developing the regulatory action, CDSS did not consider any alternatives other than the one proposed because this was the most effective. No reasonable alternative has been presented for review.

CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

## AUTHORITY AND REFERENCE CITATIONS

Authority: 1569.30, Health and Safety Code. References: Sections 1439.50, 1439.51, 1439.52, 1569.1, 1569.191, 1569.265, 1569.267, 1569.269, 1569.31, 1569.312, 1569.318, 1569.33, 1569.885, and 1569.889, Health and Safety Code; and Section 5350, Welfare and Institutions Code.